

A. 16 (B)

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 don't recall what the whole -- I recall 15c3. I
3 recall this 1.9 billion because I was sitting
4 there with the list and I said, "Gee, what is
5 15c3?" So I recall those two. I don't recall
6 if there were other categories discussed during
7 that meeting.
8 **Q. You said a moment ago that Lowitt,**
9 **when he reported on the 15c3 piece, he put that**
10 **at about 1.9 billion?**
11 A. That was the marked value.
12 **Q. Of marked value. And that there was**
13 **some value, but -- of what was in the box, but**
14 **he didn't know what it was?**
15 A. It was some value in 15c3, but he
16 didn't know how much there would be.
17 **Q. So when that meeting ended, did you**
18 **have, whether you remember the number or not**
19 **today, did you have a sense of what the total**
20 **additional value was between the 15c3 and the**
21 **contents of the box?**
22 A. No.
23 **Q. Was there any plan made to calculate**
24 **that number?**
25 A. I think Ian was putting together a

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. No, not adding additional value. He
3 didn't comment on that.
4 **Q. Did Klein make any recommendation in**
5 **your hearing as to whether Barclays should or**
6 **should not accept this deal?**
7 A. Klein recommended that they accept the
8 deal if -- when they got the additional, all the
9 additional collateral.
10 **Q. I don't mean this to be sarcastic. I**
11 **just can't come up with another way of phrasing**
12 **it.**
13 We're looking around for all this
14 additional value and your memory is not clear on
15 whether there was a target or not?
16 A. Yeah.
17 **Q. Framed that way, what was the project**
18 **here? Was it to go find everything else and**
19 **turn it over, or was it to find some, some**
20 **identifiable bucket of value until Barclays**
21 **said, yeah, that's enough? Do you see the**
22 **distinction I'm making?**
23 A. Yes, it's -- the project was the
24 second, not the first.
25 **Q. Okay. So the idea was there would be**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 schedule that he would communicate to Bart
3 with -- there was a, first of all, in that
4 discussion there was a wrap-up of this is what
5 the deal looks like. It's got the 45 billion,
6 it's got the, on the asset side, it's got this
7 1.9, it's got 15c3, it may have had, you know,
8 other components to it.
9 Bart agreed, Ian and Bart agreed that
10 these were the components on the assets side.
11 It had the assumed liabilities. They agreed
12 that those were the assumed liabilities that
13 were going to agree, I don't remember the exact
14 numbers, and they said, okay, do we have an
15 agreement? Barclays said yes. Ian was going to
16 go codify that, I believe, and talk to Bart.
17 Bart was in a car with Weil lawyers on
18 his way to bankruptcy court. That's why he
19 wasn't in the room.
20 **Q. When you say Ian was going to go away**
21 **and codify that, you mean put the schedules**
22 **together?**
23 A. I think so, yes, that's what I mean.
24 **Q. Did Mr. Klein say anything about this**
25 **process adding additional value for Barclays?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 some value left in Lehman; it was just a
3 question of finding enough additional value to
4 make Barclays still close?
5 A. Yeah. And that project was Ian's
6 project, not mine. I wasn't -- I was an
7 observer to this part of the process.
8 **Q. What was Ian's manner in this meeting?**
9 **I mean, it's a tough week for everybody, but**
10 **what's his demeanor?**
11 A. He hadn't slept in a week, so he was a
12 little harried.
13 **Q. Did Ian identify other potential**
14 **sources of additional value that he had looked**
15 **at apart from the box and 15c3?**
16 A. He --
17 MR. HUME: Objection. Asked and
18 answered.
19 **Q. You can answer.**
20 A. No, he, as I said, he may have, but I
21 didn't -- I don't remember.
22 **Q. You don't remember, then, any**
23 **particular other sources that he might have**
24 **discussed?**
25 A. No, I don't.

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<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 (Discussion off the record.) 3 BY MR. GAFFEY: 4 Q. While we're pulling a couple of 5 documents out, Mr. Kirk, let me see if I can get 6 the rest of, you know, the blocks of your day. 7 This meeting ends. Lowitt is given 8 the task of codifying -- your word -- you know, 9 getting a list together? 10 A. Yes. 11 Q. What do you do next? 12 A. I just go back to my office. Sit 13 there silently, stunned. 14 Q. Maybe try to get some sleep? 15 A. Yeah. 16 Q. Do you have any role or involvement in 17 this asset collection process we've been talking 18 about after this point? 19 A. No. 20 Q. Did you go to the hearing? 21 A. No. 22 Q. Did anyone render reports to you from 23 the hearing -- 24 A. Yes. 25 Q. -- as to what was going on?</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 Okay. Who did that? 3 A. I got a couple e-mails from Jim Seery 4 and I had a conversation with Jean-Francois 5 Astier. 6 Q. And what were the, in sum and 7 substance, what were you hearing in the reports 8 from -- we don't have to go through this chapter 9 and verse, but what were the nature of the 10 reports you were getting back from the -- 11 A. There was, first of all, they were -- 12 JF and Jim were trying to understand what the 13 new deal was, so I had a conversation with JF 14 trying to explain to him what I knew, and 15 because they were, I believe, going to 16 participate in a meeting with the creditors 17 explaining this, what the deal was. 18 And then I got -- so there was some 19 back and forth to just try to reach me on that 20 front, and then there was -- they sent me a 21 couple updates of, you know, Bart's proffers 22 being read and there's cross-examination, and 23 then ultimately the deal was done with some 24 quotes from Judge Peck later that night. 25 Q. Did anyone --</p>
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<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 A. And then somebody called me when it 3 was done. 4 Q. Somebody called to say the judge has 5 approved the deal? 6 A. Yeah. 7 Q. Did you get reports from anyone that 8 told you whether or not anyone had told the 9 judge that this was a new transaction, different 10 transaction? 11 A. I didn't get presented -- one early 12 conversation I had with JF, I didn't talk to 13 anybody directly by phone, and I just got a few 14 cursory e-mails. 15 Q. And -- 16 A. But at one point there was, you know, 17 my understanding was there was -- and early, 18 there was discussions before they went, you 19 know, to court to wrap it up with various 20 constituents. And certainly there were 21 constituents there, Bart, Michael Klein and 22 others, that had the details. 23 Q. Now, did you stay in your office until 24 you heard about the -- 25 A. No. No. I went home and I went to</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK 2 bed sometime late that evening. 3 Q. Sometime after you heard that the deal 4 had been approved? 5 A. No. No. I went to bed before that. 6 Somebody woke me up out of bed. 7 Q. Did you continue to do any work or did 8 you perform any tasks in connection with the 9 transaction -- 10 A. No. 11 Q. -- over the weekend? 12 A. Saturday I had no involvement. On 13 Sunday, Bart asked me to come in and try to 14 participate in the closing of the transaction at 15 Weil Gotshal. 16 Q. Did you do that? 17 A. Yes. 18 Q. Just so I can plan a little bit for 19 what I want to ask you after lunch break, give 20 me an outline of what you did on the Sunday. 21 A. So we went over to Weil. We, Bart and 22 I, were put in a room. You know, we were there 23 as a resource as people were trying to put 24 schedules together, et cetera. 25 An issue came up early in the morning</p>

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 around the settlement of trades on Monday and
3 how they were going to be handled, Lehman
4 trades, customer trades with Lehman. We tried
5 to help work that issue out, and then we
6 effectively became observers of this dispute
7 between JPMorgan and Barclays, as there were
8 many meetings held into the evening that
9 JPMorgan came to Weil about 6 o'clock Sunday
10 night and at the urging of the Federal Reserve
11 and they walked through, described in very large
12 group meetings the issues they had.

13 We sort of hung around and eventually
14 were told that Barclays and JPMorgan had
15 resolved their dispute and that the deal could
16 go to closure.

17 **Q. When you say "we," are you talking**
18 **about yourself and Mr. McDade?**

19 A. And there were others at Lehman as
20 well.

21 **Q. Who else?**

22 A. Jim Seery was there. I called him
23 late in the afternoon. Ian Lowitt was there.
24 Paolo was there. A guy name Alastair Blackwell
25 was there. Steve Berkenfeld was there. That's

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. Oh, I'm sure there was lots of
3 documentation, but I'm not a lawyer so I wasn't
4 reviewing it.

5 **Q. Do you know, apart from whether you**
6 **read it or reviewed it, my question is do you**
7 **know if a new -- a new contract or an amendment**
8 **or anything else was written up that would**
9 **reflect the fact that the deal had changed on**
10 **Friday?**

11 A. I assume so. I don't -- I never saw
12 actual evidence of it, but ...

13 **Q. I've asked you a couple of times when**
14 **you said you've assumed. What's the basis of**
15 **the assumption? The fact that it --**

16 A. That you couldn't proceed with a
17 commercial transaction without it.

18 **Q. Do you have any factual basis to think**
19 **that it was? Did you talk to anybody about it?**
20 **Did you see any documents?**

21 A. I didn't see any documents. Certainly
22 we were advised by Weil that the documents were
23 in good order.

24 (Exhibit 316, an e-mail chain with
25 attached balance sheet, marked for

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 everybody I recall.

3 **Q. Did you learn how the dispute between**
4 **JPM and Barclays had been resolved, what the**
5 **terms of that resolution were?**

6 A. They didn't tell us.

7 **Q. So did anybody ask, anybody say how**
8 **did this issue get resolved?**

9 A. Yeah, and they said it's between us
10 and -- Barclays representatives told us -- well,
11 I don't remember if it was the lawyer or who
12 specifically, but a representative from Barclays
13 said that's between Barclays and JPMorgan.

14 **Q. So the closing did not take place on**
15 **the Sunday, correct?**

16 A. It eventually I think closed Monday
17 morning, but it was one continuous -- I left at
18 2 A.M., and then they worked towards closing at
19 some point in the morning prior to the markets
20 opening.

21 **Q. Did you go back for the closing?**

22 A. No.

23 **Q. Do you know if any additional**
24 **documentation was done to reflect the new**
25 **agreement that had been reached on Friday?**

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 identification, as of this date.)

3 **Q. I have put before you, Mr. Kirk, a**
4 **three-page document. I'll ask you to take a**
5 **look through it sufficiently to tell me whether**
6 **you've seen it before.**

7 A. Yes, I've seen it.

8 **Q. Did you see it at or around the time**
9 **that it's -- of September 19 at 6:16 A.M.?**
10 **That's the date at the top.**

11 A. Yes.

12 **Q. And was this sent to you -- was it**
13 **your understanding this was sent to you to**
14 **prepare for that Friday meeting we've been**
15 **talking about?**

16 A. It was one, one of the documents that
17 I assumed we would review.

18 **Q. Okay. And do you recall --**

19 MR. HUME: Are you marking it as an
20 exhibit?

21 MR. GAFFEY: Yes, I did, Hamish. It's
22 316.

23 MR. HUME: I'm sorry.

24 **Q. Do you recall reviewing it at the**
25 **Friday meeting?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. No, I actually don't recall reviewing
3 this.
4 Q. Let me just direct your attention,
5 sir, to the third page -- well, to the second
6 page. You'll see that that's a balance sheet
7 that's attached to the e-mail and then referred
8 to in the second e-mail.
9 A. Yes.
10 Q. Do you know who prepared this balance
11 sheet?
12 A. I don't know specifically who prepared
13 it, but it would have been prepared by
14 accounting.
15 Q. Okay. And --
16 A. Well, the e-mail seems to indicate
17 Martin -- somebody who worked for Martin Kelly
18 had prepared it.
19 Q. And within the balance sheet, sir, the
20 fifth column that's entitled Transaction
21 Adjustments, do you see that?
22 A. Yes.
23 Q. Do you know what that column
24 represents, what the entries in that column are
25 meant to represent?

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 adjustment of 1,645,000,000?
3 A. Uh-huh.
4 Q. Resulting in a balance sheet transfer
5 total of 2.25 billion, do you see that?
6 A. Uh-huh. Uh-huh.
7 Q. 2.25 is the amount that you recall
8 Mr. Tonucci telling you was the assumed
9 liability for cure that was Barclays'
10 consideration in the deal?
11 A. Yes.
12 Q. Do you have any knowledge or have you
13 been involved in any discussion where a
14 transaction adjustment of 1.645 billion was made
15 against Lehman's books? Do you know if that
16 number was written up?
17 A. If it was written up, meaning?
18 Q. Do you know if the amount for cure
19 payments shown on Lehman's books was written up
20 by 1.645 billion?
21 A. Oh, I have no idea.
22 Q. Did you ever have a discussion with
23 Mr. Tonucci or Mr. Kelly or Mr. Lowitt about
24 that topic?
25 A. No.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Only from reading it.
3 Q. I don't want you just to guess from
4 the face of the document.
5 A. No.
6 Q. Do you recall any discussion of
7 transaction adjustments?
8 A. No.
9 Q. And in particular, if you could take a
10 look at the last page of the document, I would
11 ask you to take a look at the Transaction
12 Adjustments column where it says 2 billion and
13 1.645 billion, are you with me?
14 A. Uh-huh.
15 Q. And you'll see that those relate to,
16 if you read across to the left, items Bonus
17 Payable and Cure Payments?
18 A. Uh-huh.
19 Q. And if you read across with me on the
20 Cure Payments line, you'll see, as of 8/31/08,
21 the number 701 is there, you with me?
22 A. Uh-huh.
23 Q. And then as of 9/17/08, 605?
24 A. Uh-huh.
25 Q. And then there's a transaction

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Q. And I'll ask you the same question,
3 sir, with respect to the line for bonus payable.
4 Do you see a transaction adjustment of 2
5 billion, and the 2 billion is contained in the
6 Balance Sheet Transferred column?
7 A. Yes.
8 Q. Any conversations with Lowitt, Kelly
9 or Tonucci about that topic?
10 A. No, no conversations.
11 Q. Any conversations with anyone else
12 about that topic?
13 A. No.
14 Q. Was that topic addressed at the Friday
15 meeting we've been talking about, to your
16 recollection?
17 A. Only to the extent that there was a
18 liability that was 2 billion and 2 and a quarter
19 billion that's reflected in this balance sheet
20 that had been agreed to prior.
21 Q. Do you know if those liabilities of 2
22 billion and 2 and a quarter billion were based
23 on Lehman's accruals on its books, or were they
24 agreed numbers?
25 A. I don't know.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Q.** Mr. Kirk, I'm showing you what was
3 previously marked as Exhibit 8 at a prior
4 deposition. Take a look through it, sir,
5 sufficiently to tell me whether you've seen it
6 before.
7 A. Yes.
8 **Q.** Okay. And what is the document, sir?
9 A. This is a list of assets that Lehman
10 Brothers owned.
11 **Q.** Was this document -- and again, just
12 for clarity, there's a time on the cover e-mail
13 of Mr. Reilly's e-mail to you of 10:51 A.M.,
14 GMT, which would put it at 6:51 New York time,
15 okay?
16 Do you recall receiving this in the
17 early morning of Friday?
18 A. Yes.
19 **Q.** Is this one of the schedules that
20 was -- was this schedule sent to you for use at
21 the Friday meeting?
22 A. Yes.
23 **Q.** Okay. And what was its purpose? What
24 is this supposed to tell you that's of use to
25 you at the Friday meeting?

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. I don't recall this being discussed
3 because we quickly got to, as I described
4 before, that whatever schedules had been
5 produced earlier in that week were no longer
6 operative.
7 **Q.** Do you know if the schedule that's
8 attached to Exhibit 8 bears any relation to the
9 schedule that was summarized in Exhibit 19, that
10 is, that --
11 A. I don't remember. I can't tell.
12 **Q.** Okay. Just back on that page,
13 Mr. Kirk, do you know what the column Excluded
14 is for? Do you know what it means?
15 A. No, I don't know what that means.
16 **Q.** I take it, then, you wouldn't be able
17 to tell me what "Available for Transfer" means
18 either?
19 A. No, I don't remember what that is.
20 **Q.** Do you recall anyone discussing this?
21 Whether you recall the contents of the
22 discussion, do you recall anybody discussing
23 this at the meeting?
24 A. I don't recall discussing this
25 particular sheet.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. I don't recall specifically what this
3 was used to describe to me, except that it was
4 a -- this I assume is a, just a comprehensive
5 list of the assets that were going -- were
6 planned to be transferred to Barclays.
7 **Q.** Now, if you would take look, Mr. Kirk,
8 at the third page of the document. It's a --
9 MR. KELLEY: Sorry, Bob, you said the
10 third page?
11 MR. GAFFEY: Yes, the third page.
12 A. The Woodburn?
13 **Q.** No, just before that.
14 A. That's my second page.
15 **Q.** My fault. The second page of the
16 document. What do you understand that to be,
17 sir?
18 A. I don't recall what this was
19 particularly. I can read it for the face of it,
20 but ...
21 **Q.** Well, if you could read it with the
22 Friday meeting in mind and tell me if it
23 refreshes your recollection as to what role this
24 summary would have played in your activities at
25 that meeting, that would be helpful.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 MR. GAFFEY: Why don't we take a lunch
3 break now.
4 (Luncheon Recess; Time Noted: 12:29
5 P.M.)
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1 HIGHLY CONFIDENTIAL - A. KIRK
2 AFTERNOON SESSION
3 (Time Noted: 1:16 P.M.)
4 ALEX KIRK, resumed and
5 testified further as follows:
6 EXAMINATION BY (Cont'd.)
7 MR. GAFFEY:
8 Q. We talked a little bit this morning,
9 Mr. Kirk, about Mr. Shafir leaving on Thursday?
10 A. Yes.
11 Q. Did he just leave? I mean, was it
12 sudden?
13 A. I just got a call after the fact. I
14 don't know what the back and forth was.
15 Q. Did Mr. McDade or did anyone say to
16 you anything to the effect of this would be a
17 problem for Lehman in the deal since Shafir had
18 played a major role in the negotiations, in sum
19 or substance? Did you pick up that sense from
20 anybody?
21 MR. HUME: Objection to the form of
22 the question.
23 A. I don't remember if he described it as
24 a problem, but certainly, you know, there was
25 lots to do that needed to be done.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 somebody, so ...
3 Q. In the initial conversations with Bart
4 McDade on the Thursday night and with Lehman
5 folks on the Friday morning, does anyone comment
6 on the departure of Shafir and its impact on the
7 deal?
8 MR. HUME: Objection. Asked and
9 answered.
10 MR. KELLEY: Objection as to form.
11 A. Can I answer that question?
12 Q. Yes, I think you can.
13 A. No, with the exception of it's
14 unfortunate that he's left at this moment in
15 time.
16 (Exhibit 317, a document bearing Bates
17 Nos. 10310050, marked for identification, as
18 of this date.)
19 Q. Mr. Kirk, I'll ask you just take a
20 look through that document sufficiently to tell
21 me whether you can remember seeing it before?
22 A. Yes.
23 Q. Did you see it at or around the time
24 that it's dated, September 19?
25 A. Yes.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. Uh-huh.
3 A. It was not viewed as a happy
4 circumstance.
5 Q. Sure. Were there parts, to your
6 knowledge, were there parts of the deal, of the
7 negotiations in which Shafir would be the only
8 source of knowledge?
9 A. I don't know the answer to that. I
10 wasn't around the negotiations at all earlier in
11 the week, so I don't know who did what.
12 Q. Okay. From your time around there
13 during the week, I mean, I understand your
14 involvement in the deal becomes more intense, as
15 it were, on the Friday, but do you pick up any
16 idea during the week of how involved McDade is
17 in the negotiations?
18 A. I think he was very involved.
19 Q. Is he negotiating particular issues or
20 the deal as a whole?
21 A. Again, I don't have any specifics.
22 They were, all these -- my understanding all
23 these negotiations were taking place on the 32nd
24 floor, which I never went up to the 32nd floor
25 during that period of time except maybe to find

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. Reading up the e-mail chain from
3 bottom to top, you appear to get added in in the
4 message from Paul Houston to O'Meara, Tonucci,
5 Kirk, Walsh, dated 18th September at 23:12, do
6 you see that?
7 A. Uh-huh.
8 MR. KELLEY: I think you meant
9 Houston.
10 Q. I beg your pardon. I do mean Houston,
11 yes.
12 A. Yes.
13 Q. Do you have an understanding of why
14 you are added into this e-mail conversation at
15 this point? What's the issue?
16 A. The issue appears to be, or I recall
17 it to be the racers trust was a piece of
18 collateral that Barclays had received in the
19 repo. Inside the racers trust -- by the way,
20 there are many racers trusts, so I think racers
21 trust was something that indicated a whole
22 series of financing trusts. It wasn't one
23 particular financing trust.
24 But in one of them there might have
25 been a -- some commercial real estate

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 collateral, Archstone, in particular, and Mike
3 Mazzei, who is -- ran commercial real estate at
4 Barclays, is pinging the number to the guy in
5 commercial real estate, Paul Houston at Lehman,
6 to try to understand the nature of that of --
7 well, he's trying to understand something about
8 Archstone relative to that.

9 Q. What is Archstone?

10 A. Archstone is a very large commercial
11 real estate financing that both Lehman and
12 Barclays participated in in the fall of '07.

13 Q. Now, in the e-mail in which you're
14 joined in the communication, Houston writes to
15 O'Meara, Tonucci, Kirk and Walsh, "What should I
16 tell him? That the assets are not going to
17 Barclays?" Do you see that?

18 A. Uh-huh.

19 Q. What do you understand Mr. Houston to
20 mean when he writes to you that the assets --
21 "What should I tell them? That the assets
22 aren't going to Barclays?"

23 A. Barclays had specifically told
24 representatives of Lehman Brothers that they
25 didn't want commercial real estate exposure.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. I don't know the answer to that.
3 Q. Did you ever hear a discussion about
4 whether the racers could be taken out of the
5 repo and other collateral substituted for them?

6 A. No.

7 This, by the way, seems to indicate
8 that the racers with the Archstone pieces
9 were -- had custody at Chase, JPMorgan Chase.

10 Q. I'm about to move on to Tonucci where
11 he says, "They are with Chase now." What does
12 that mean in context? How does it address the
13 problem that's being discussed in the e-mail?

14 A. There was an assumption by Paul
15 Houston that Mike Mazzei was just fishing for
16 information about Archstone which may be
17 proprietary to Lehman Brothers that he would
18 like for purposes other than the deal. So he
19 was looking for a reason not to answer any
20 questions about Archstone and because it
21 wouldn't have been proper if their assets
22 weren't being transferred, and Paolo is
23 confirming that the assets would not be
24 transferred because they're at Chase.

25 Q. Okay. So, with that answer in mind,

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. So, fairly understood, the issue here
3 is that Barclays does not want the racers, yes?

4 A. Doesn't want commercial real estate.
5 Racers might have a whole variety of collateral
6 inside them.

7 Q. Do you know if the racers remained in
8 the assets that were ultimately transferred to
9 Barclays?

10 A. No idea.

11 Q. Do you know if there was any
12 discussion with Barclays about whether or not
13 the racers should remain in the value that
14 ultimately was transferred to Barclays?

15 A. If they were in the repo, I believe
16 they were transferred to Barclays because
17 Barclays had possession of them. If they were
18 not in the repo, I believe they were not in.

19 Q. Do you know if --

20 A. And again, this was a series of
21 financings, so there was more than one Racers
22 Trust.

23 Q. Do you know if at any point the racers
24 were taken out of the repo and other collateral
25 was substituted for that?

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 does this e-mail chain in your mind address any
3 issue concerning whether the racers would stay
4 in or not stay in the repo?

5 A. No.

6 (Exhibit 318, a document bearing Bates
7 Nos. 10325943 with attachment, marked for
8 identification, as of this date.)

9 Q. Mr. Kirk, I have put before you two
10 documents, one which we have marked as Exhibit
11 318, a one-page document bearing numbers
12 10325943. Withdrawn.

13 MR. KELLEY: On our copy the comment
14 at the far left is, on some pages, partially
15 blocked out.

16 MR. GAFFEY: I don't have a copy of it
17 yet. I see that.

18 MR. KELLEY: That's not a good 318.

19 MR. GAFFEY: Let me more clearly
20 describe it for the record. Exhibit 318 is
21 actually a multi-page document bearing
22 number 10325943, annexed to which is a
23 schedule which I agree, David, is miscopied
24 so that some of the numbers down the
25 left-hand side don't appear and there may

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 actually be some numbers cut off at the
3 bottom, but I'm not going to ask any
4 questions about the specific numbers.
5 BY MR. GAFFEY:
6 Q. Have you seen Exhibit 318 before,
7 Mr. Kirk?
8 A. Yes.
9 Q. And what is the document?
10 A. This is a schedule of residential
11 mortgage positions available for sale.
12 Q. Is this one of the schedules that we
13 spoke about before the break that were prepared
14 for the -- in connection with the Friday, the
15 Friday project to see what assets could be
16 transferred to Barclays?
17 MR. HUME: Objection. Vague and
18 ambiguous.
19 A. I don't know if this was in particular
20 for that, but it appears to be so.
21 Q. Okay. Do you have a recollection of
22 seeing this document on that Friday, on the
23 19th, in connection with the work you were doing
24 that day?
25 A. I took a cursory review of it, as I

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 equivalent of what actually could be sold to
3 Barclays, this would have been one of them, and
4 to be able to deliver to the experts to value
5 them.
6 Q. Okay. I may be retreading a little
7 bit a topic we addressed before the lunch break,
8 and forgive me for that, but I want to make sure
9 I have a clear understanding of your memory of
10 this.
11 In this work on Friday to find
12 additional assets, the 15c3 and the unencumbered
13 assets, I asked you that question about the
14 broad spectrum, you know, just go find
15 everything or go find a defined amount.
16 Was the formula that was used there,
17 in essence, keep finding assets until Barclays
18 says that's enough?
19 MR. HUME: Objection. Vague and
20 ambiguous.
21 A. Again, I didn't -- I wasn't party to
22 the discussion between Bart and Ian as to what
23 the specifics of that was.
24 (Exhibit 319, an e-mail chain, marked
25 for identification, as of this date.)

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 recall.
3 Q. Would you take a look at what's
4 previously been marked as Exhibit 9, which is
5 also before you. Same question: Have you seen
6 the document before?
7 A. Yes.
8 Q. And what is the document?
9 A. This is a schedule of CDs and
10 short-term money market instruments that were
11 available for sale.
12 Q. And again, the same question: Did you
13 have this document, did you use this document in
14 connection with the work you were doing on
15 Friday, the 19th?
16 A. Yes.
17 Q. And for what purpose did you use it?
18 A. The same -- to be particular, I don't
19 know if this is the document that was produced
20 that was part of the 45 billion or it was a
21 schedule that related to the 70 billion or it
22 was something in between. I just don't know.
23 Q. Okay.
24 A. But all the documents that were
25 produced were an attempt to get to the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. You have before you, Mr. Kirk, a
3 two-page document that we have marked as Exhibit
4 319. Take a look through it. Let me know
5 whether you've seen the document before, please.
6 (Document review.)
7 A. Yes.
8 Q. And what's the document? Well, it
9 appears to be a set of e-mails sent to and fro
10 on the 19th of September. Do you recall seeing
11 this e-mail chain at or around the time that
12 these e-mails are dated?
13 A. Yes.
14 Q. And tell me what you remember about
15 the circumstances under which this is of
16 interest to you -- withdrawn.
17 Why is this chain of e-mails of
18 interest to you in the work you're doing on the
19 19th?
20 A. Well, this is 5:30 in the afternoon.
21 Everybody's left for court. Jim Seery asks me
22 if I'm coming down to the courthouse. That's
23 the first e-mail. I'm not planning on it. Do I
24 have to, i.e., do they need to be down there?
25 He replies no. We will be drinking later.

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HIGHLY CONFIDENTIAL - A. KIRK

I reply, "I'm here. I'm close to the building. How long will you guys be down there?" "Give you an idea after we start." "Sounds like hours." "What is the value of collateral Barclays posted to the DTC today?" I answered, "I believe it's 45 and a half. Billion would be the number, would be the big number. "I don't know the marked value," meaning I don't know what the change in the value might have been between the marks on Thursday night that they accepted and what -- what had been attempted to agree to on Friday.

Q. Okay. The 45.5, let me see if I can put a little context to this. When you get this last e-mail from Mr. Seery in this sequence, the one with the time of 5:51 on the Friday?

A. Uh-huh.

Q. Is it your understanding Mr. Seery is down in court still?

A. Yes.

Q. And Seery is writing to you to ask what the value of the collateral was that Barclays posted to the DTC. What do you understand Seery to mean when he's describing it

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HIGHLY CONFIDENTIAL - A. KIRK

Q. Now, the --

I'm sorry, "marked," M-A-R-K-E-D, was supposed to read "market," is that what you --

A. Probably.

Q. So the value of 45.5 that you referred to here may go to a question I asked you before the break, which was whether or not you became aware of the value that was put on the repo collateral by Bank of New York?

A. I don't know if this is a number that was quoted to me by Barclays and it was a number they had at -- by Bank of New York or not. I just don't recall.

Q. Do you have any recollection of what your source was for the \$45 and a half billion number in your e-mail?

MR. HUME: Objection. Asked and answered.

A. I don't remember.

Q. Did you ever learn why it was that Seery was asking you this question from the courthouse?

MR. KELLEY: Objection. Speculation.

MR. HUME: Calls for speculation.

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HIGHLY CONFIDENTIAL - A. KIRK

as the collateral that Barclays posted to the DTC?

A. The collateral that they would have held in the DTC account at Bank of New York, bank, you know, that they had taken over from the Fed, the repo.

Q. Is that the collateral in the repo?

A. Yes.

Q. And you put the value in your response at 45.5 billion, correct?

A. Yes.

Q. And you're distinguishing in your response the difference between the marked value and what kind of value? The actual value? The fair value?

A. Whatever the stated value of the transfer was, which Barclays had indicated all day that they weren't sure what the actual value of the collateral was, so that 45 was the stated value versus, as I said, I didn't know what the marked value or the market value was.

Q. Okay. Now --

A. And it's probably meant to read "market." I probably just mistyped it.

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HIGHLY CONFIDENTIAL - A. KIRK

Objection.

Q. You can answer.

A. I assume there was a good reason he needed it. I don't know what it was.

Q. Yeah, my question is a little different. Did there come a time when you ever knew, either at the time or later, why Seery wanted to know this information from you?

A. No, because it was impossible to communicate directly with him that evening. There was -- I didn't have a phone. I didn't have a conversation with him to have it explained to me.

Q. He's in the courthouse so he can't use his phone.

It doesn't matter. You can't speak to him by telephone?

A. It's chaos.

Q. Now, did you ever learn, sir, what value was described to the court of the deal as it stood on Friday?

A. No.

(Exhibit 320, a document bearing Bates Nos. 10293820, marked for identification, as

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 of this date.)
3 **Q. Mr. Kirk, you have before you what I**
4 **have marked as Exhibit 320, a two-page chain of**
5 **e-mails. Have you seen this document before?**
6 A. I don't remember seeing this document,
7 no.
8 **Q. Do you recall learning that -- have**
9 **you had a chance to look through the document?**
10 **Sorry.**
11 A. I don't recall this.
12 **Q. Okay. Do you recall any**
13 **conversation -- take a look at the chain of**
14 **e-mails. You see it ends, it discusses Barclays**
15 **closing out the repo with Lehman and taking all**
16 **of the assets collateral, asking, further up,**
17 **Jean-Francois Astier asks, "Is that part of the**
18 **plan?" You respond, "Call my cell."**
19 **Do you see that?**
20 A. Right, uh-huh.
21 **Q. Do you recall a conversation with him**
22 **about that topic?**
23 A. I don't recall speaking to JF about
24 this specific topic.
25 **Q. And JF is Mr. Astier?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **wrong, your understanding was at the time that**
3 **Barclays is taking both the collateral**
4 **reflecting the financing amount of the repo and**
5 **the haircut; is that correct?**
6 A. I don't remember understanding what it
7 was exactly that they had done.
8 **Q. Now, after writing back to JF, "Call**
9 **my cell," he writes back to you, "I don't**
10 **understand it either. Seery says it is okay.**
11 **He is walking out to call you." Do you see**
12 **that?**
13 A. Yes.
14 **Q. Now, I take it at 11:18 P.M. --**
15 **actually, 7:18 P.M., with the adjustment for**
16 **Greenwich mean time, on the 19th of February,**
17 **Mr. Seery is still down in the courthouse,**
18 **correct?**
19 A. Yeah, they're all down there. JF is
20 down there as well.
21 **Q. And Seery can't use his phone to call**
22 **you from the courthouse, we've talked about**
23 **that, and he says, "Seery is walking out to call**
24 **you." Do you recall getting a phone call from**
25 **Mr. Seery that evening?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Jean-Francois Astier.
3 **Q. And do you recall the topic coming up,**
4 **whether you remember speaking to JF about it or**
5 **not, the topic being Barclays taking all the**
6 **collateral in the repo?**
7 A. Without being refreshed by this
8 e-mail, I didn't recall it.
9 **Q. Does this e-mail refresh your**
10 **recollection as to whether or not the topic came**
11 **up?**
12 A. Somewhat.
13 **Q. What do you remember about it?**
14 A. I think I remember knowing nothing
15 about this being part of the plan or discussed
16 prior to us going down to the courthouse.
17 **Q. And when you say you remember nothing**
18 **about it being part of the plan, do you mean you**
19 **didn't know one way or the other, or you thought**
20 **it wasn't part of the plan? Or you thought it**
21 **wasn't part of the plan?**
22 A. It was never discussed one way or
23 another.
24 **Q. So your understanding was at the time**
25 **that Barclays was taking, correct me if I'm**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Yes, but I don't recall what
3 specifically the discussion was.
4 **Q. Do you recall anything about the**
5 **discussion?**
6 A. No.
7 **Q. But you do recall receiving a**
8 **telephone call from Mr. Seery?**
9 A. Yes, vaguely. This is refreshing my
10 memory. He must have called me if he says he's
11 going to.
12 **Q. Does it refresh your memory, as you**
13 **look further at the document, that you got a**
14 **call and somehow the topic was the repo?**
15 A. If it was, it wouldn't have been more
16 beyond Jim just saying it's not a big deal,
17 don't worry about it.
18 **Q. Jim saying it's -- that the issue,**
19 **that the issue's not a big deal, or the fact**
20 **that Barclays' taking the collateral is not a**
21 **big deal?**
22 A. I think the issue, whatever that --
23 which is Barclays taking collateral, so it's one
24 and the same.
25 **Q. And after around that time, around**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **7:18 P.M. on that Friday, did you have a**
3 **discussion with anyone else about Barclays**
4 **taking the collateral that was in the repo at**
5 **any point?**
6 A. No.
7 **Q. Did you talk to anybody about that**
8 **over the weekend?**
9 A. No.
10 **Q. Was there any conversation about that**
11 **when you and Mr. McDade were at Weil in**
12 **connection with preparing for the closing?**
13 A. Not that I recall.
14 **Q. Do you know if the issue of Barclays**
15 **taking the collateral in the repo was addressed**
16 **at the closing in any way?**
17 A. I assume not, because if the
18 transaction was that they were -- well, I don't
19 remember is the better answer. I don't remember
20 that being discussed.
21 **Q. And as you sit here today, you have no**
22 **recollection of you yourself engaging in a**
23 **conversation with anyone about Barclays taking**
24 **the collateral that was in the repo?**
25 A. Except for a vague recollection that

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 read back?
3 THE WITNESS: Yeah, why don't you read
4 the question back, please. I'm not quite
5 sure exactly...
6 (Record read.)
7 MR. HUME: Same objection.
8 A. No, that discussion never took place.
9 There was too much uncertainty about the values.
10 **Q. Was there, in connection with this**
11 **value of additional profit we talked about on**
12 **Friday, was there any discussion about what it**
13 **would take to get Barclays up to the value of**
14 **the financing in the repo?**
15 A. Not that I was present at. I don't
16 know if there were any away from me.
17 **Q. This sort of goes to a few other**
18 **questions I have asked you about, whether there**
19 **was a goal or a cap on how much had to be**
20 **collected on Friday.**
21 Without regard to what the number may
22 or may not have been, was the goal to find
23 enough assets to replace the loss in value
24 within the repo?
25 MR. HUME: Objection. Vague and

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Jim would have called me about it.
3 **Q. And just so I'm clear on that, because**
4 **you're gesturing at the document saying "Jim**
5 **would have," do you have a recollection --**
6 A. Yeah.
7 **Q. -- or are you just inferring that from**
8 **the document?**
9 A. It's vague. I don't recall the
10 specific conversation.
11 **Q. Okay.**
12 A. But if it had been an issue, I'm sure
13 I would remember it.
14 **Q. Okay.**
15 A. Since it wasn't.
16 **Q. And from the discussions on Friday, it**
17 **was your understanding that if Barclays got --**
18 **if this value collection effort gave Barclays**
19 **enough value to support the financing in the**
20 **repo, that Lehman would get the excess back,**
21 **right?**
22 MR. HUME: Objection.
23 Mischaracterizes the testimony.
24 A. I don't --
25 MR. KELLEY: Do you want the question

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 ambiguous and lack of foundation.
3 A. In the end, I was the witness to an
4 agreement that was agreed to between Bart and
5 Ian and the Barclays team, but I wasn't part of
6 any discussions as to the basis for that
7 agreement.
8 **Q. And the agreement that you were a**
9 **witness to is the one you described to me before**
10 **where they said, do we have a deal?**
11 A. Yes.
12 **Q. And the agreement was we have a deal.**
13 (Exhibit 321, a document bearing Bates
14 Nos. AK-LB-BANKR00002 through 27, marked for
15 identification, as of this date.)
16 **Q. Mr. Kirk, I have put before you a**
17 **document bearing Bates number AK-LB-BANKR000002**
18 **through 27. Do you recognize the document?**
19 A. Yes.
20 **Q. What is it?**
21 A. It's a notebook.
22 **Q. Is it your notebook?**
23 A. Yes, my notebook.
24 **Q. Is it in your handwriting?**
25 A. Yes.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. During the course of your work in
3 connection with the Barclays matter, did you
4 carry the same notebook from place to place?
5 What was your habit with respect to taking
6 notes?
7 MR. KELLEY: Objection. Do you
8 understand the "Barclays matter."
9 THE WITNESS: What?
10 Q. Withdrawn. Did you take these notes
11 during the week of the 15th to the 22nd that
12 we've been talking about today?
13 A. From the 11th or -- 10th or 11th to
14 the -- yeah.
15 Q. Okay. Some of these notes may go back
16 to the period before the weekend?
17 A. Yes.
18 Q. Is that what you're telling me?
19 A. Yes.
20 MR. HUME: May I ask a question? Were
21 these notes produced to Barclays by anyone.
22 MR. GAFFEY: I have no idea. They
23 were produced by the witness pursuant to the
24 subpoena.
25 Q. Are you able to tell me from looking

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Sunday, the 14th?
3 A. Because this is dealing with issues
4 that we might have -- hold on one second. Hold
5 on. I apologize. I'm wrong. Sorry. Hold on.
6 14 I'm not sure about. That may
7 actually still have to do with the morning of
8 attempting to get the Barclays deal done and how
9 we would deal with that with Spinco. This
10 reference to Shafron is what makes me think that
11 it is because Steve was the point on Treasury
12 with us. He works for Treasury.
13 Q. So once I see Steve Shafir's name at
14 page --
15 A. Shafron.
16 Q. Shafron, I see.
17 A. Right. That indicates I'm still
18 trapped at the Fed. Okay? There's notes here
19 with the reference to tri-party repo labeled
20 number 1 on page 16 is during our discussions
21 with the Fed, and the following pages prior to
22 filing but when they were encouraging us to
23 file.
24 Q. Now, if you would turn to page --
25 A. So that's during that period of time.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 at your notes, Mr. Kirk, when you took these
3 notes?
4 A. Some of them, yes.
5 Q. Let's just take a minute. I don't
6 want you to go through every page, but tell me
7 how you're dating it because there's no dates on
8 any of the pages.
9 A. This looks like it would have been
10 Friday, the 12th, first page.
11 Q. Okay. And you're making that
12 inference from the kind of notes you have here
13 that's what was being discussed then?
14 A. That's correct.
15 Q. Could you go, if you don't mind, maybe
16 we can save you some time, if you would go
17 through the notes and tell me at what point they
18 pick up, if at all, on the events that begin on
19 the Sunday night, the 15th. I meant Sunday, the
20 14th, I'm told.
21 (Document review.)
22 A. Page 14.
23 Q. Okay. And just so I can put it in
24 some kind of context, what is it about page 14
25 that tells you this picks up on the night of

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Hold on. That goes through the 18. Yeah, I
3 think that's through 18. Those are all notes
4 from the meeting with the Fed and the Treasury
5 representatives between 4 and 7 o'clock Sunday.
6 Q. Okay. Now, are the notes sequential
7 after that? Can I -- I'm trying to get a course
8 of dealing here. Can I kind of work on the
9 assumption that we're at Sunday or after as I go
10 through the rest of these notes?
11 I note that it's a spiral notebook,
12 and that's one of the reasons I'm asking that
13 question. Are you writing as you go?
14 A. I don't know that these are all in the
15 same order, but let me just look. Sometimes you
16 end up inadvertently skipping a page.
17 Yeah, these are -- these next through
18 23 are --
19 Q. Okay.
20 A. -- sequential.
21 Q. Can we go to 23, please?
22 A. Yes.
23 Q. There's a list of what appear to be
24 names on there, Chambers, Orlan, Assi, Seery, do
25 you see that?

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Yes.
3 **Q. Anything to add? Any knowledge as to**
4 **why you're listing those eight names there?**
5 A. I don't recall specifically. Some of
6 these people I'm responsible for, some of them
7 I'm not, so I don't recall exactly what this
8 list was -- why it's there. This would have
9 been during the week, early in the week of the
10 15th.
11 **Q. And if you would turn to starting at**
12 **page 24, it's the following four pages are --**
13 **following three pages are a typewritten balance**
14 **sheet of some kind.**
15 **Are we in the same place?**
16 A. Yes.
17 **Q. And it's entitled Funding 2008 Q3**
18 **Balance Sheet?**
19 A. This was a schedule which was faxed to
20 Bart Saturday morning at the Fed that he and I
21 used to prepare for a meeting with John Mack,
22 Vickram Pandit, John Thayne and their associates
23 to discuss the possible iterations of Lehman
24 Brothers going forward. This was those -- that
25 was the first -- well, that's the first pages of

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Q. Do you know, these numbers on the**
3 **right-hand side, 1B and 1.7B, what do they**
4 **represent?**
5 A. I don't recall what they represent.
6 (Exhibit 323, a document bearing Bates
7 Nos. AK-LB-BANKR000030, marked for
8 identification, as of this date.)
9 **Q. You have before you, Mr. Kirk, what we**
10 **have marked as Exhibit 323, bearing Bates number**
11 **AK-LB-BANKR000030. Are these notes in your**
12 **handwriting?**
13 A. Yes.
14 **Q. Can you, as you look at them, do you**
15 **remember the circumstances under which you took**
16 **the notes?**
17 A. I think these were notes on Sunday
18 during the closing.
19 **Q. And why is it you think they're notes**
20 **on Sunday during the closing?**
21 A. Because I see a reference to Alastair,
22 which would be Alastair Blackwell, who I didn't
23 deal with prior to Sunday, and Tom Hamilton, who
24 was head of mortgage trading at Barclays, who
25 was trying to deal with this issue of the

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 funding.
3 This second page is a -- is an
4 analysis that B of A did marking down our assets
5 earlier in the week, which we also discussed at
6 that meeting. B of A's valuation of Lehman
7 Brothers' assets.
8 **Q. You can put that aside. I'm done with**
9 **that document.**
10 A. Okay.
11 (Exhibit 322, a document bearing Bates
12 Nos. AK-LB-BANKR000028, marked for
13 identification, as of this date.)
14 **Q. Before you, Mr. Kirk, is Exhibit 322,**
15 **a one-page set of notes bearing Bates number**
16 **AK-LB-BANKR000028. Is that your handwriting?**
17 A. Yes.
18 **Q. Do you have any recollection of making**
19 **these notes?**
20 A. Yeah, this was somebody trying to
21 explain to me in broad terms what 15c3-3 was.
22 **Q. Okay. I take it you're looking at the**
23 **reference to customer accounts segregated in**
24 **margin in the box in the upper left-hand corner.**
25 A. I'm looking at the whole page, yes.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 settlements.
3 The dispute that arose on Sunday was
4 who was going to guarantee the settlements of
5 the trades that were supposed to settlement on
6 Lehman Brothers' account starting Monday
7 morning.
8 **Q. And that dispute, broadly speaking,**
9 **involved DTC needing some comfort as to who was**
10 **going to guarantee those settlements?**
11 A. Yes.
12 **Q. Now, on the notes themselves there is,**
13 **amidst the names and above the name Tom Hamilton**
14 **and Harry Harnson -- I'm just giving you that**
15 **for placement on the document.**
16 A. Uh-huh.
17 **Q. -- is what appears to be an Assets and**
18 **Liabilities column; is that right?**
19 A. Yes.
20 **Q. Okay. Can you explain to me what that**
21 **represents?**
22 A. To the extent that I understand it, it
23 represents some assets of 45 and a half billion,
24 goodwill would be the next line of 250 million,
25 and then it had a loan from BarCap that says 45

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 and a half, and then payables or trade payables,
3 or whatever they are, cure payments and comp of
4 2 and a quarter and 2 billion on it.

5 Q. Is that your understanding of the
6 balance sheet of the deal that was agreed on
7 Friday?

8 MR. HUME: Objection. Lacks
9 foundation.

10 A. I don't remember if this was -- this
11 was probably more a broad generalization than a
12 specific.

13 Q. I recognize it's some handwritten
14 notes and it's got scratches all over it, sir.
15 I'm not giving it any greater dignity than that,
16 but my question is, really goes to the 45.5 on
17 the asset side and the 45.5 on the liability
18 side.

19 A. I don't remember for this specific
20 document and why I was scratching this out that
21 way.

22 Q. You do see on the liability side the
23 amount for payables at 2.25 billion, correct?

24 A. Yes.

25 Q. And the amount for comp at 2 billion,

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 correct?

3 A. Yes.

4 Q. And those were the assumed liabilities
5 that had stayed in the deal from the first time
6 you saw it, right?

7 A. This would have been -- yes, but I
8 don't know, I don't recall anybody warranting to
9 me what all these numbers were or if I was just
10 scratching them down from a press release or...

11 Q. Actually, I should ask you that. Do
12 you recall the source? Is this something you're
13 reading? Something somebody is saying?

14 A. I don't recall whether this was
15 something somebody was saying or if I was
16 reading a press release or a, you know, a
17 newspaper account or something.

18 Q. Do you have any understanding with the
19 repo in mind of whether the agreement made on
20 Friday was that Barclays would get 45.5 out of
21 the repo --

22 MR. HUME: Objection.

23 MR. GAFFEY: You got to wait until I'm
24 done, Hamish.

25 MR. HUME: I thought you were.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. Do you have any understanding with the
3 repo in mind of whether the agreement made on
4 Friday was that Barclays would get 45.5 out of
5 the repo in return for 45.5 in funding?

6 MR. HUME: Objection. Lack of
7 foundation.

8 A. I'm not sure, actually. They had
9 funded the firm for that amount on Thursday, so
10 I --

11 Q. I see the problem. Let me rephrase
12 the question. You understood that Barclays had
13 funded the firm for 45.5 the prior Thursday,
14 correct?

15 A. Thursday or Friday, right.

16 Q. Okay. And on the Friday, you
17 understood that the deal had changed so that the
18 collateral in the repo was what would be
19 transferred to Barclays, correct?

20 A. Correct.

21 Q. Did these notes reflect your
22 understanding that what would be transferred to
23 Barclays was the amount in the repo sufficient
24 to cover the amount they had funded?

25 MR. HUME: Objection.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. They were supposed to balance?

3 MR. HUME: Objection. Vague and
4 ambiguous as to what the values they had
5 funded.

6 Q. Do you have the question in mind? Do
7 you want it read?

8 A. No. No, I understand the question.
9 I'm just saying there were lots of moving parts,
10 so I don't know that those were exactly supposed
11 to balance in that.

12 Q. Was it your understanding they were
13 roughly supposed to balance?

14 MR. HUME: Objection. Vague and
15 ambiguous.

16 A. Again, I don't -- I didn't have an
17 understanding of that. I didn't know how much
18 would be made up from the shortfall of other
19 assets versus the repo. Once they went to
20 court, I wasn't dealing with valuation issues,
21 so ...

22 Q. Apart from the source of assets to be
23 given to Barclays, was it your understanding
24 that what was to be given to Barclays was to be
25 equal to the amount that Barclays had funded?

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 MR. HUME: Objection.
3 MR. KELLEY: Objection. Speculation.
4 Misstates prior answers.
5 MR. HUME: Vague and ambiguous as to
6 valuation.
7 A. I didn't have that understanding.
8 **Q. Did you have --**
9 A. Nowhere did anybody say they should be
10 equal.
11 **Q. Okay. Did you have an understanding**
12 **that Barclays was going to get more than it had**
13 **funded?**
14 A. In terms of assets?
15 **Q. Yes.**
16 A. Yeah, they were going to get assets
17 that were unencumbered.
18 **Q. And when you added the unencumbered to**
19 **the amount in the repo, was it your**
20 **understanding that Barclays was going to take**
21 **more out than it had funded into the repo?**
22 A. Well, they were also assuming other
23 liabilities away from the repo.
24 **Q. I understand that.**
25 **Did you understand they were going to**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **latter bucket of assets was to equal or to**
3 **exceed the amount that Barclays had paid into**
4 **the repo for funding?**
5 MR. HUME: Again, objection. Vague
6 and ambiguous as to the valuations posed in
7 your question.
8 A. My understanding was the totality of
9 the assets should attempt to get somewhere close
10 to covering all the liabilities.
11 **Q. The liabilities, you mean the**
12 **liabilities in the repo plus the assumed**
13 **liabilities?**
14 A. Yes.
15 **Q. Is that what you mean?**
16 MR. HUME: Objection to the phrase
17 "assumed liabilities."
18 A. Yes.
19 **Q. And the assumed liabilities you're**
20 **referring to are the assumed liabilities for**
21 **payable and comp in the amount of 4.25 billion,**
22 **correct?**
23 A. Correct, and then ultimately the
24 assumed liabilities in guaranteeing the trading
25 obligations which they were agreed to do come

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **take out more than they had funded into the**
3 **repo?**
4 MR. KELLEY: Objection. That's based
5 on speculation. Calls for speculation, I
6 should say.
7 THE WITNESS: So I --
8 **Q. You can answer that question.**
9 MR. KELLEY: It just asks him to
10 identify the source of his knowledge.
11 MR. GAFFEY: No, I'm going to ask him
12 to answer the question I asked.
13 Will you read it back?
14 (Record read.)
15 A. I don't understand the nature of, when
16 you say "take out more," what does that mean?
17 **Q. Barclays funds the repo to the tune of**
18 **\$45.5 billion, you understand that, right?**
19 A. Right.
20 **Q. In the asset transfer agreement that's**
21 **at issue for the bankruptcy court, Barclays is**
22 **going to take a certain amount of assets out of**
23 **Lehman, correct?**
24 A. Yes.
25 **Q. Was it your understanding that that**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 Sunday.
3 **Q. Okay. And do you know what the**
4 **resolution was of the issue of guaranteeing --**
5 **the dollar resolution was of the guarantee of**
6 **the trading liabilities?**
7 A. I don't recall specifically, but they
8 agreed to I think fund into DTC some amount of
9 cash to make good on the liabilities. I don't
10 remember what the number was.
11 **Q. Do you recall that the number was**
12 **about \$250 million?**
13 A. Sounds reasonable.
14 **Q. Okay. So Barclays is to take out of**
15 **the deal an amount roughly in balance to the**
16 **amount in the repo, the assumed liability for**
17 **comp, the assumed liability for payables, and**
18 **the guarantee to the DTC; is that your**
19 **understanding?**
20 MR. HUME: Object to the form of the
21 question.
22 A. And the goodwill.
23 **Q. And the goodwill. And the goodwill is**
24 **about 250 million, correct?**
25 A. Right, so that -- well, they were

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 buying the business of Lehman Brothers and they
3 were buying a whole bunch of assets which had,
4 in my opinion, quite uncertain value so that
5 they could lose many billions of dollars or make
6 many billions of dollars on those assets given
7 the volatility of the markets, and in addition
8 to that, they would obviously get the ongoing
9 operations of Lehman Brothers.

10 Q. Was it your understanding that --

11 A. So that it was --

12 Q. Sorry.

13 A. What I would say is that, in my
14 opinion, there was, at least from my seat, no
15 way to know what the actual value of those
16 assets would end up being for Barclays, you
17 know, over -- because I had no idea what
18 strategies they were going to pursue about those
19 assets, whether they were going to hedge them,
20 you know, all the variety of things that they
21 might end up choosing to do to execute a large,
22 huge block of -- the size of a transfer of this
23 size of assets is, you know, enormous and at the
24 time maybe even unprecedented.

25 Q. Was it your understanding that the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Bates number AK-LB-BANKR000097 through 119. Do
3 you recognize the document?

4 A. Yes.

5 Q. What is the document?

6 A. This is a document that describes the
7 deal that was cut early in the week between
8 Lehman and Barclays.

9 Q. Is that your handwriting on the
10 document?

11 A. No.

12 Q. Do you know whose handwriting it is on
13 the document?

14 A. No.

15 Q. I would note that the document was
16 produced to us by you. Do you know how you came
17 into possession of this document with somebody
18 else's handwriting on it? Any memory?

19 A. No, I don't know what this is.

20 Q. Do you have any knowledge of what the
21 annotations mean on the asset side where
22 somebody has written "ACT" and "HC"?

23 A. No.

24 Q. Would you understand the phrase "HC"
25 to mean haircut?

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 transaction was supposed to give Barclays a gain
3 on day one?

4 A. No.

5 Q. I hear what you're saying about longer
6 term they may operate the business and make
7 money out of it. The question about day one, I
8 want to be sure we're --

9 A. Yeah.

10 Q. -- hearing each other here. Was it
11 your understanding that there was any immediate
12 gain embedded for Barclays in the deal that was
13 made on Friday?

14 MR. HUME: Objection. Lacks
15 foundation.

16 A. No, there was no understanding on my
17 part that there was a gain.

18 (Recess; Time Noted: 2:10 P.M.)

19 (Time Noted: 3:15 P.M.)

20 (Exhibit 324, a document bearing Bates
21 Nos. AK-LB-BANKR0000987 through 119, marked
22 for identification, as of this date.)

23 BY MR. GAFFEY:

24 Q. Mr. Kirk, you have before you what we
25 have marked as Exhibit 324, a document bearing

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1 HIGHLY CONFIDENTIAL - A. KIRK

2 A. That could be.

3 Q. Would you understand the phrase "ACT"
4 to mean actual?

5 A. That's not usually a vernacular, but
6 maybe.

7 Q. I asked you --

8 A. It could be "account."

9 Q. Could be. I don't know what your --

10 A. Yeah. Yeah.

11 Q. I asked you earlier this morning if
12 you had any knowledge of a discount or a haircut
13 being given to Barclays on the book value of the
14 assets being traded for in the early part of the
15 week. Does this refresh your recollection as to
16 whether there was an agreement on the deal as it
17 originally was made on Monday and Tuesday to
18 give Barclays a discount from book value?

19 A. No.

20 Q. Could you put before you Exhibit 19?
21 It's within the pile.

22 A. What does it look like?

23 Q. It's the other copy of that financial
24 statement, the one-pager.

25 A. Yeah.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. I'm just going to take a fly around
3 this just because I wonder if you know.
4 This document, if you compare it to
5 Exhibit 19, that is, Exhibit 324 is identical to
6 Exhibit 19, except for two things: One is the
7 handwritten note in the upper right-hand corner
8 in 19 and the other is the time stamp in the
9 lower right-hand corner.
10 You see one is generated 11:18 and one
11 is generated at 11:19?
12 A. Okay.
13 Q. Do you have any knowledge of how this
14 schedule was being generated or who was
15 generating it?
16 A. No, I don't even know why I had this
17 document. Whatever documents I had I gave to
18 David, he gave to you.
19 Q. Okay. I have nothing further at this
20 time.
21 Oh, sorry, I lied. I have one more.
22 (Exhibit 325, a document bearing Bates
23 Nos. AK-LB-BANKR000188, marked for
24 identification, as of this date.)
25 A. Okay.

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. Meaning that Lehman didn't survive and
3 thrive as an independent entity.
4 MR. GAFFEY: Okay. Now I have nothing
5 further. Thanks.
6 I have to pass you down to my friends.
7 EXAMINATION BY
8 MR. ROTHMAN:
9 Q. Good afternoon. My name is Seth
10 Rothman. We met earlier. I represent the
11 trustee who's been appointed under the SIPA
12 statute to liquidate LBI.
13 A. Okay.
14 Q. If you would dig out of the pile of
15 exhibits in front of you number 322. These are
16 your handwritten notes, correct?
17 A. Yes.
18 Q. In the upper left-hand corner at the
19 top of the page, there's a box that's divided in
20 two. It says "Customer Account Seg" in the top?
21 A. Uh-huh.
22 Q. Correct? And then underneath it says
23 "Margin." Can you tell me what that represents?
24 A. Okay. My recollection was somebody
25 was trying to explain to me how the 15c3 margin

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 Q. Before you, Mr. Kirk, is a one-page
3 document from amongst the documents that you
4 produced, and its number is AK-LB-BANKR0000188.
5 A. Uh-huh.
6 Q. Do you recognize the document?
7 A. Yes.
8 Q. And the first e-mail in the series,
9 the earlier one, is from you saying, "Today is
10 my last day at BarCap/Lehman. I want to thank
11 everyone for all their help over the years," and
12 you give your contact information, do you see
13 that?
14 A. Uh-huh.
15 Q. And the next e-mail up is a response
16 from Mr. McGee to you, do you see that?
17 A. Uh-huh.
18 Q. Where he says, "You are a talent and a
19 good guy. You were amazing through the final
20 months. I am sorry we didn't pull it off. Best
21 of luck." Do you see that?
22 A. Uh-huh.
23 Q. Do you know what Mr. McGee was
24 referring to when he said, "I'm sorry we didn't
25 pull it off"?

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 worked, and it was, my recollection from
3 reviewing this document, it was different than
4 between high-net worth individuals and Neuberger
5 Berman, so that's why there's four boxes instead
6 of two.
7 I don't remember the distinct
8 difference, but the customer accounts, the
9 individual customer accounts in the
10 high-net-worth business were held in individual
11 accounts. In each of them there was some margin
12 that Lehman had to support those accounts. It
13 was regulatory -- required by regulation.
14 Q. Are you familiar with the concept of a
15 margin deposit to cover short positions?
16 A. I'm familiar with that concept.
17 Q. Is that what you were referring to
18 here when you write margin?
19 A. I don't know if it was that or if
20 there were other margin requirements that were
21 required by the regulators. I don't know if it
22 was specifically that or if it was overall
23 margin or if the margin is not required on
24 others.
25 Q. Over on the right it looks like you

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HIGHLY CONFIDENTIAL - A. KIRK
wrote 500, is that million?

A. It looks like that, yeah.

Q. Do you know if that relates to the margin box on the left?

A. It appears to, but none of these numbers add up in those columns over there, so I'm not sure what it refers to exactly.

Q. Do you recall any discussions concerning the margin deposit that LBI had with the OCC?

A. With the?

Q. OCC.

A. Who's that? What's that? The office of --

Q. The Options Clearing --

A. Oh, no.

Q. -- Corp.

A. Those typically would have been equity options positions. I assume would have been mostly equity, so it was not my bailiwick. I was not involved in that.

Q. In your work on the transaction, did you hear any discussions about whether margin deposits would be transferred to Barclays?

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HIGHLY CONFIDENTIAL - A. KIRK
government securities in terms of what was settling.

So I was involved only to the extent that I tracked down through Kaushik Amin and Jeff Michaels, who ran agency and government bond trading, to get him in touch with the mortgage people at Barclays to explain to them how what the market risk in those positions and settlement risk in those positions would be.

So I set up a call. I reached Jeff Michaels on the phone, I tracked him down, and then I got him to speak to the Barclays representatives by phone. I didn't participate in those conversations.

Q. Who is Jeff Michaels?

A. Head of government agency trading at Lehman Brothers in the U.S. -- globally, I think.

Q. You also mentioned in response to Mr. Gaffey's questions a guarantee relating to this issue.

A. We were informed that the issue had been settled later in the day along with there was a, what I referred to as a global settlement

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HIGHLY CONFIDENTIAL - A. KIRK

A. I don't recall.

Q. You can put that aside.

A. Okay.

Q. And you mentioned that there was a dispute involving the DTC. Do you recall that?

A. Yes.

Q. That arose on Sunday while you were up at Weil?

A. Yes.

Q. When did you become aware of that dispute? At what point during the day?

A. It would have been somewhere, sometime between 10 and 2, 10 A.M. and 2 P.M.

Q. And how did you become aware of that?

A. I don't recall who told us it was an issue, but someone informed Bart and I in the room that there was an issue with the settlements and those obligations going forward.

Q. So you yourself weren't involved or participating directly in any of those discussions?

A. We were informed there was an issue. We were informed that it -- a big piece of the issue had to do with TBAs, mortgage trades, and

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HIGHLY CONFIDENTIAL - A. KIRK
between JPMorgan and Barclays. We were not given details, but I do recall one detail we were given was that they had agreed to guarantee the trades. They had gotten enough information and the DTC was comfortable to settle trades the next day. We couldn't open for business with this cash deposit.

Q. When you say they had agreed to guarantee the trade?

A. Barclays.

Q. And did you understand the guarantee to be \$250 million or --

A. I don't know if -- I remember the amount, that amount being discussed as being put as a deposit. I don't remember if there were additional parts of the guarantee that were described beyond that. There might have been.

Q. Did you hear that there was a concern, any concern on the part of the DTC that it might be exposed if the trades didn't settle?

A. I remember that being discussed at some point in the day as the reason as to why all the DTC trades had failed on Friday, and DTC was concerned that if they reopened, they would

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 be assuming all kinds of risks from failed
3 trades on Friday and in addition to the trades
4 going forward on Monday, and that they wanted
5 some -- they needed a margin safety to be able
6 to do that. So they were concerned that they
7 were exposed.
8 **Q. And did you hear anything about the**
9 **extent of that exposure?**
10 A. No.
11 **Q. Do you know if the deposit or the**
12 **guarantee was meant to cover the entire**
13 **potential exposure?**
14 A. I don't know the answer to that.
15 Those discussions happened directly, that is, my
16 understanding those discussions happened
17 directly between DTC and Barclays.
18 **Q. Do you know if there was a written**
19 **agreement?**
20 A. I don't know that.
21 **Q. You never saw a written agreement**
22 **resolving this dispute with the DTC?**
23 A. No. No.
24 **Q. Did you hear anything about what would**
25 **happen to the guarantee if it turned out not to**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 that period of time.
3 The only person who would do that was
4 Barclays. Barclays apparently needed a waiver
5 of shareholder approval to make that guarantee,
6 which the FSA deemed they would not give.
7 **Q. Okay. Let me now switch topics again**
8 **and take you back to the Friday meeting that you**
9 **testified that I think you said started around 3**
10 **o'clock on Friday afternoon?**
11 A. Uh-huh.
12 **Q. This is the meeting that you had with,**
13 **among others, Mr. Klein, Mr. Diamond and**
14 **Mr. Keegan from Barclays?**
15 A. Uh-huh.
16 **Q. You have to give me an out-loud**
17 **answer --**
18 A. Yes.
19 **Q. -- for the court reporter. Thanks.**
20 **Was Mr. McDade physically present in**
21 **that meeting or is he on the phone?**
22 A. He's on the phone.
23 **Q. And were there any discussions about**
24 **that during that meeting about having to go back**
25 **and explain the deal to the Barclays board?**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 be used?
3 A. No.
4 **Q. Changing the subject. You mentioned**
5 **back on September 14 that Mr. McDade told you**
6 **that the first transaction that was being**
7 **discussed with Barclays wasn't going to go**
8 **forward. Do you remember that?**
9 A. Yes.
10 **Q. And I think you said he told you that**
11 **the FSA had turned down the application to close**
12 **that transaction?**
13 A. Yes.
14 **Q. Did he tell you why?**
15 A. Yes, that Barclays needed a waiver to
16 guarantee the trading obligations -- I'm sorry,
17 Barclays -- for Lehman to -- for them to close
18 the transaction, they would have to get a
19 shareholder vote, which would take some period
20 of time, I forget if it was 30 or 45 days, but
21 some reasonable period of time, and that it was
22 the view of all the participants, including
23 Treasury and the Fed and everybody, that Lehman
24 would not make it for 30 days without somebody
25 else guaranteeing the trading obligations for

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 A. No, not in that meeting.
3 **Q. Did you hear that at another meeting?**
4 A. No, I didn't hear it in any meeting.
5 **Q. When you say no, you don't think it**
6 **happened or you don't remember?**
7 A. No, I didn't hear it. Didn't
8 happen -- that was not discussed in front of me.
9 This was what day again? This was the
10 19th?
11 **Q. On Friday, the 19th.**
12 A. Friday, yes, no.
13 **Q. You had a meeting --**
14 A. Yeah.
15 **Q. -- late in the afternoon where -- this**
16 **is late in the afternoon where I think you said**
17 **this is when Barclays came back and said they**
18 **thought the value of the securities didn't match**
19 **the value of the loan and so they were looking**
20 **for additional unencumbered assets?**
21 A. Uh-huh.
22 **Q. Is that right?**
23 A. Yes.
24 **Q. And Mr. Gaffey asked you a couple of**
25 **times about whether they gave a target or a**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **number for how much more they would need?**
3 A. Yes.
4 **Q. Right?**
5 As best you can recall, they didn't
6 give you such a number, correct; is that right?
7 A. That's correct.
8 **Q. And nobody -- Mr. Klein didn't say**
9 **anything about having to have a certain number**
10 **to go back to the Barclays board?**
11 A. No.
12 **Q. I'm going to mark as my only exhibit**
13 **as 326 an e-mail from you to Mr. McDade.**
14 **(Exhibit 326, an e-mail chain, marked**
15 **for identification, as of this date.)**
16 A. Right.
17 **Q. Do you recall sending this e-mail to**
18 **Mr. McDade?**
19 A. I do recall that.
20 **Q. So the bottom e-mail on the page is**
21 **from you to Mr. McDade. It's sent on that**
22 **Friday at 3:39.**
23 A. Uh-huh.
24 **Q. Do you see that?**
25 A. Yes.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 about two days before.
3 So my primary concern at that point
4 was that there be as much flexibility, so to
5 speak, at least give the -- enough operating
6 room that we wouldn't go into court, have the
7 transaction denied, and have to put the padlocks
8 on the building Saturday morning.
9 So -- and I've been around many, many
10 bankruptcy cases over two decades. Wildly
11 uncertain things happen in these courts in
12 circumstances.
13 **Q. Sorry. Is that what you meant by**
14 **"blow up the trade"?**
15 A. Yes.
16 **Q. That the bankruptcy court wouldn't**
17 **approve the deal?**
18 A. That's correct.
19 **Q. And you were, just so I understand**
20 **your testimony, you were concerned that that**
21 **might happen if Barclays was too piggish?**
22 A. Yeah, I think there were a myriad of
23 risks that could have done, you know, I mean,
24 the -- the stress of that not happening that
25 evening and you only had one shot at it, you

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Q. You write to Mr. McDade, "Rich Ricci**
3 **just told me he won't blow up this trade by**
4 **being a pig."**
5 **Do you recall the context for that?**
6 A. Well, the Barclays team had left.
7 Bart was on the road and he was having
8 discussions with Ian about whatever additional
9 assets there were. You know, I implored to
10 these guys that they shouldn't blow this deal
11 up, 10,000 jobs were at stake, you know, there
12 was a tremendous amount of pressure on all of
13 us, and Rich said to me something to this
14 effect: I won't blow the deal up by being too
15 piggish.
16 I wanted to make sure Bart knew that
17 because they were wrapping up with he and Ian
18 whatever issues there were, so that's why I sent
19 the e-mail.
20 **Q. Was there a concern on the Lehman said**
21 **that the Barclays people were being too piggish?**
22 A. I was concerned that we were going to
23 go into bankruptcy court, which there's always
24 uncertainty, and try to describe a deal that
25 didn't look like the deal that they had heard

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 know, it was -- certainly everybody was very
3 concerned that this was sort of a do-or-die
4 situation, literally.
5 **Q. Was the comment about being a pig**
6 **related to the effort to find unencumbered**
7 **assets?**
8 A. Yes.
9 **Q. And you didn't -- so you don't have,**
10 **since that's in Mr. Lowitt's bailiwick, you**
11 **don't have a specific number or value that**
12 **would --**
13 A. No, this comment had been made to me.
14 I just wanted to pass it along.
15 **Q. And then Mr. McDade asks you back,**
16 **"Are the shorts all gone?" What was that a**
17 **reference to? Did you have an understanding as**
18 **to what he meant?**
19 A. I don't recall specifically why he
20 asked that, but that was a problem we were
21 dealing with all week at Lehman, that we were
22 naturally getting longer every day because our
23 hedges were either derivatives that had been
24 wiped out by the terms of their contracts or
25 short positions that were being bought in on the

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 other side.

3 So, you know, asset prices were
4 imploding and we were naturally getting longer
5 every day. So his question was how long is the
6 firm, so to speak, at this moment in time. I
7 believe -- I don't -- so that's what I -- I
8 guess I tracked that down.

9 **Q. And that's what your answer to**
10 **Mr. McDade says?**

11 A. Yeah. Yeah.

12 MR. ROTHMAN: That's all the questions
13 I have. Thank you.

14 THE WITNESS: You're welcome.

15 EXAMINATION BY

16 MR. TECCE:

17 **Q. Mr. Kirk, my name is James Tecce. I'm**
18 **an attorney at Quinn Emanuel. We are special**
19 **counsel to the Creditors Committee. I just**
20 **wanted to ask you a couple of follow-up**
21 **questions.**

22 **Going back to Friday, September 19th,**
23 **I believe it is, I think that you had said that**
24 **it was your belief on that day that JPMorgan**
25 **Chase would be "hostile," I believe was the word**

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1 HIGHLY CONFIDENTIAL - A. KIRK
2 DTC account. So I don't remember whether they
3 had closed -- I learned about it all on Friday.
4 I just don't remember if it was for that day or
5 it was for the previous day.

6 **Q. Do you know what the basis -- do you**
7 **have an understanding of the basis of**
8 **Mr. Lowitt's statements that Chase had been**
9 **taking collateral?**

10 A. Well, he was dealing with them
11 directly, so they were -- my understanding was
12 that they were threatening to not clear our
13 transactions without additional collateral prior
14 to the bankruptcy.

15 **Q. Did he provide any examples of that to**
16 **you?**

17 A. The one example that he provided was
18 that they requested Thursday night, the 11th --
19 is that right? Yeah, the 11th, that Lehman
20 deliver another \$5 billion to them prior to the
21 opening on Friday.

22 **Q. Going forward to the 21st, I believe**
23 **Sunday, the day of the closing, September 21,**
24 **you had just spoken briefly about the dispute**
25 **regarding the guarantee of trades with the DTC.**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **that you used, with respect to the transaction.**

3 **What was the basis for that belief?**

4 A. The fact that they had shut our DTC
5 account down was one issue. The other issue was
6 that Barclays had described to me they were
7 having a dispute with JPMorgan about the
8 transfer of collateral. In addition to that,
9 JPMorgan had been, my -- my understanding, it
10 had been described to me by Ian that JPMorgan
11 over time prior to the bankruptcy had been
12 squeezing a lot of additional collateral out of
13 Lehman Brothers along the way.

14 **Q. Do you have an understanding as to**
15 **when JPMorgan froze the DTC account?**

16 A. You know, it was either Thursday or
17 Friday. I don't remember. I think it was --
18 I'm pretty sure it was Friday, but it may have
19 been Thursday.

20 **Q. And when were you told about the**
21 **dispute between Chase and Barclays that you**
22 **described?**

23 A. Friday morning.

24 **Q. Going forward --**

25 A. And that's when I learned about the

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Were you aware of any other disputes**
3 **besides that issue between Chase and Barclays at**
4 **that time?**

5 A. They were still arguing about the
6 transfer of collateral, your clients were there
7 for some of those arguments, in a, what I would
8 refer to as a giant conference room with 50
9 people in it and a lot of yelling.

10 **Q. Right. And do you remember the**
11 **substance of those disputes regarding the**
12 **collateral?**

13 A. JPMorgan felt as if Barclays should
14 pay them and take additional collateral to
15 complete the repo transfer from the Fed, and in
16 addition to that, they actually asked for
17 Barclays to buy additional collateral even
18 beyond that that they had gotten from Lehman
19 Brothers earlier.

20 **Q. And do you have an understanding as to**
21 **what the resolution of that dispute was?**

22 A. No, they wouldn't tell us.

23 **Q. Do you have an understanding of anyone**
24 **at Lehman who does know the resolution of that**
25 **dispute?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. I don't know if anybody at Lehman does
3 know that.
4 **Q. Do you know if Mr. McDade knows the**
5 **answer?**
6 A. I don't know that. I was in the room
7 when they told us they wouldn't tell us. I
8 don't know if there were conversations after
9 that.
10 **Q. Do you have an understanding if**
11 **Mr. Klein knows the resolution of the dispute?**
12 A. I don't know that he knows it. He
13 probably does.
14 **Q. Do you have an understanding as to**
15 **whether or not the resolution of that dispute**
16 **resulted in any additional assets being**
17 **transferred or liabilities being assumed by**
18 **Barclays in connection with the transaction?**
19 A. I don't know the answer to that. This
20 was a delivered to us as a fait accompli and,
21 you know, at 2 I went home. There may have been
22 somebody dealing with transfers of assets and
23 have some insight into that. Ian might have
24 insight into it, you know, what happened past
25 that in terms of the closing, but he may not

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **Q. And this, again, correct me if I'm**
3 **wrong, this is the issue of the settling of the**
4 **trades involving the DTC?**
5 A. Yes.
6 **Q. And just going up to the e-mail Sunday**
7 **September 21, 18:13:18, do you see that? I**
8 **believe it's the second e-mail down from the top**
9 **of the page.**
10 A. Uh-huh.
11 **Q. And Mr. Michaels asks you, I believe,**
12 **"Okay, here is where we are." He says, "We had**
13 **a problem with Chase on Friday re about 8B of**
14 **collateral. They are the ones holding up this**
15 **transaction. Chase holds the cards and Alastair**
16 **and Beth are involved."**
17 **What's your understanding of what**
18 **Mr. Michaels is saying in that e-mail?**
19 A. He's certainly saying that JPMorgan
20 Chase is acting as a hostile party. They're
21 holding up the transaction. There's a dispute
22 on Friday. I don't know what exact dispute he's
23 referring to because there were lots of disputes
24 with JPMorgan at this point in time. They had
25 shut our DTC account down. They had taken the

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 have because, you know, there may not be -- I
3 don't think they would necessarily have had to
4 have involved Lehman in any transfer of assets
5 between JPMorgan and Barclays. They may have.
6 They may not have. I don't know.
7 (Exhibit 327, an e-mail chain dated
8 September 21, 2008, marked for
9 identification, as of this date.)
10 **Q. I'm handing the witness an Exhibit**
11 **327, an e-mail dated 9/21/2008.**
12 A. Uh-huh.
13 **Q. Have you ever seen this document**
14 **before?**
15 A. Yes.
16 **Q. What is it?**
17 A. This is a series of e-mails between
18 myself and Jeff Michaels, who I described
19 earlier was global head of government and agency
20 trading, and who I was -- reached to deal with
21 directly with the -- his counterparties at
22 Barclays to describe what the settlement issues
23 going forward were in his business so they could
24 get some sense of what the risk of those
25 settlement issues were.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 DTC deposit from us. They were having a dispute
3 with Barclays at the same time. And you know,
4 Alastair, Alastair Blackwell, as head of
5 operations, and Beth I think it's Rudolfker who
6 he's referring to, I assume who is a lawyer,
7 are, you know, involved in trying to settle this
8 position.
9 Why I asked him how many treasuries
10 was he short in his position I don't recall.
11 **Q. What are treasuries?**
12 A. Government bonds.
13 **Q. And let's actually just go back to**
14 **his -- to Mr. Michaels e-mail. He says about 8**
15 **billion of collateral. Do you know whether --**
16 **do you have an understanding as to whether or**
17 **not that was Fed repo collateral or other**
18 **collateral?**
19 A. I don't recall what collateral that
20 was. There were a couple disputes with
21 JPMorgan, so ...
22 **Q. And the treasuries, what portion of**
23 **the assets transferred were the treasuries, what**
24 **basket of the assets transferred would the**
25 **treasuries have fallen into? Would they have**

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HIGHLY CONFIDENTIAL - A. KIRK
been part of the Fed repo or would they have
been part of the, quote/unquote, unencumbered?

A. The issues that I'm discussing with
him here are settlements. So these are going
forward -- they're not actually positions.
They're going-forward settlements between Lehman
and other counterparties that Lehman's standing
in the middle buying and selling all kind of
securities. So that the positions were
reflected.

This would have reflected what risk
there would be in settlements not settling in a
normal way. So that -- but to answer your
question, I don't -- I don't remember what the
percentage of treasuries were in this. I wasn't
dealing with him on any -- on that issue.

MR. TECCE: Those are the only
questions I have. Thank you for your time.

MR. HUME: I have just a few
questions.

EXAMINATION BY

BY MR. HUME:

**Q. Mr. Kirk, my name is Hamish Hume. We
met before. I represent Barclays.**

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HIGHLY CONFIDENTIAL - A. KIRK
discuss whether there was any good basis for
disagreeing with Mr. Keegan's concerns. Do you
recall describing that?

A. Yes.

**Q. I believe you testified that the three
of you concluded there wasn't really a strong
basis for disagreeing with Mr. Keegan. Do you
recall that?**

A. Yes.

**Q. During those discussions, were you
attempting to negotiate the best deal you could
for Lehman Brothers?**

A. Yes.

**Q. Do you believe you participated in
arm's length negotiations or that you witnessed
arm's length negotiations?**

A. I'll be clear about that. I wasn't
actually negotiating and I wasn't -- I had no
authority to negotiate. I believe we were
participating in arm's length negotiations,
Lehman was, with Barclays.

**Q. You testified earlier in the
deposition that you did not have an
understanding regarding whether there would be a**

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HIGHLY CONFIDENTIAL - A. KIRK
Mr. Kirk, during the week of September
15 to September 22, 2008 that you've been
questioned about, did you believe there was any
other viable purchaser of Lehman Brothers other
than Barclays?

A. No.

**Q. Did you believe there was any other
alternative for Lehman Brothers other than the
Barclays acquisition?**

A. Liquidation.

**Q. Did you believe the Barclays
acquisition was the best outcome for the Lehman
estate for all stakeholders?**

A. Yes.

**Q. During the questioning earlier in the
deposition, you were asked -- you testified
about discussions with Mike Keegan about
valuation of assets, do you recall that,
generally?**

A. Yes.

**Q. And I think at one point you were
explaining that Mr. Keegan complained about
certain asset values and that you at some point
huddled with Ian Lowitt and Bart McDade to**

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HIGHLY CONFIDENTIAL - A. KIRK
gain at Barclays on day one; do you recall that
line of questioning?

A. Yes.

**Q. Did you have any knowledge about how
Barclays would account for this transaction on
its balance sheet?**

A. No.

**Q. Did you give any thought or analysis
to how Barclays would account for the
transaction on its balance sheet during the
negotiations?**

A. No.

**Q. Did you have any knowledge of whether
Barclays would be required to record an
intangible asset in excess of a billion dollars
on its balance sheet?**

A. No.

**Q. Did I understand your testimony
earlier that you believed many of the assets
being transferred to Barclays were of uncertain
value?**

A. Yes.

**Q. And were many of those assets going to
take some time to value?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 A. Yes.
3 **Q. Did you understand the liabilities for**
4 **cure payments and compensation to be estimated**
5 **liabilities?**
6 A. Yes.
7 **Q. Did you understand that Barclays was**
8 **stepping into the shoes of Lehman with respect**
9 **to its exchange-traded derivative accounts?**
10 A. I was not aware of any agreements
11 around the derivatives.
12 **Q. You weren't involved one way or the**
13 **other with derivatives?**
14 A. I wasn't involved one way or the
15 other.
16 **Q. Did you generally understand that both**
17 **the assets and the liabilities Barclays was**
18 **taking over were uncertain and difficult to**
19 **value as of the time of the transaction?**
20 A. Yes.
21 **Q. Therefore, as of the time of the**
22 **transaction, was it in your mind possible that**
23 **after Barclays had taken the time to value the**
24 **assets and the liabilities in accordance with**
25 **its own methodology and accounted for the**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **that earlier. I'm saying, wholly apart from**
3 **what would happen over time, after Barclays took**
4 **the time to actually value the assets and**
5 **liabilities as they were valued on day one,**
6 **given the uncertainties in both the assets and**
7 **values that Barclays took on and the limitations**
8 **on what you knew about derivatives and other**
9 **assets, was it in your mind at least possible**
10 **that Barclays would record either a gain or a**
11 **loss on day one, as of day one of the**
12 **transaction?**
13 MR. GAFFEY: Objection to form.
14 MR. ROTHMAN: Objection to form.
15 A. Yes, it was possible.
16 **Q. Mr. Kirk, you testified a little bit**
17 **about the transfer of collateral when Barclays**
18 **replaced the Federal Reserve's lending position**
19 **on the repo transaction, do you recall that,**
20 **generally?**
21 A. Yes.
22 **Q. Were you aware of that when Barclays**
23 **advanced its \$45 billion in cash to replace the**
24 **Federal Reserve, Barclays did not receive the**
25 **same collateral that had been pledged by Lehman**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **transaction under its own accounting**
3 **methodologies, that it would be possible that it**
4 **record either a gain or a loss on the**
5 **transaction --**
6 MR. GAFFEY: Objection.
7 **Q. -- as of day one?**
8 MR. GAFFEY: Object to the form.
9 **Q. Do you understand the question?**
10 MR. GAFFEY: You can ignore me.
11 THE WITNESS: Okay.
12 MR. GAFFEY: He can't, but you can.
13 THE WITNESS: Okay. I never know with
14 these objections if I'm supposed to ignore
15 them or not.
16 I think it was completely a matter
17 of -- I had no idea what their accounting
18 issues were on any of those fronts, so I was
19 not aware of that, and whether they would
20 end up recording a gain or loss over time
21 would depend upon market conditions, hedging
22 strategies, you know, disposition
23 strategies, et cetera, that I had no insight
24 into how they were going to execute them.
25 **Q. I understand that. I think you said**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **to the Federal Reserve in its repo?**
3 A. I was not aware of that.
4 **Q. Were you aware of the operational**
5 **difficulties that arose when the Fed collateral**
6 **was released into the Lehman clearing account so**
7 **that some of that collateral disappeared or was**
8 **tucked into other transactions and, therefore,**
9 **could not be transferred to Barclays?**
10 A. I was not aware of any specifics of
11 those issues. I was aware there was a -- some
12 dispute.
13 **Q. I'd like to refer you very quickly to**
14 **Exhibit 321.**
15 A. Okay.
16 **Q. The third-to-last page with the Bates**
17 **number, number in the bottom corner, number 25.**
18 A. Okay.
19 **Q. Which I believe you testified**
20 **reflected write-downs that were being discussed**
21 **or considered by Bank of America in the**
22 **potential Bank of America transaction; is that**
23 **correct?**
24 A. That is correct.
25 **Q. Was this done during that weekend**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **before the bankruptcy when you were at the Fed?**

3 A. This was done I believe the Friday,
4 December -- September 12th.

5 **Q. And I don't know if you testified or**
6 **not, but whose handwriting is this on this page?**

7 A. I don't know whose handwriting this
8 is. It's not mine.

9 **Q. Was the general idea that Bank of**
10 **America wanted haircuts or discounts from the**
11 **marked to market book values that Lehman had for**
12 **these assets?**

13 A. Yes.

14 **Q. And was that information shared with**
15 **the Federal Reserve during discussions?**

16 A. Yes.

17 **Q. And did the Federal Reserve express**
18 **any surprise or disagreement with that concept?**

19 A. I wasn't there when they shared it,
20 this information.

21 **Q. How do you know it was shared with the**
22 **Federal Reserve?**

23 A. Because we got this delivered to us at
24 the Federal Reserve. We shared it with -- I
25 think Bart gave a copy to Shafron and we shared

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **and say it differently.**

3 **Did you at any time form an**
4 **understanding at any time that weekend or that**
5 **Monday, the 22nd, did you ever form an**
6 **understanding that the unencumbered collateral**
7 **in the clearance boxes that Ian Lowitt had**
8 **identified to be transferred in the transaction**
9 **were not going to be transferred in the**
10 **transaction because of the way in which Barclays**
11 **was dealing with the DTC settlement issue?**

12 MR. ROTHMAN: Objection to the form.

13 MR. GAFFEY: Join.

14 MR. TECCE: Join.

15 A. No.

16 **Q. That was never your understanding?**

17 A. No.

18 MR. HUME: No further questions.

19 EXAMINATION BY

20 MR. GAFFEY:

21 **Q. Just one or two. Your view that there**
22 **was no other viable purchaser, would that view**
23 **have changed if there were a \$5 billion**
24 **immediate gain embedded in the transaction?**
25 **Would you have had the view there might be**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 it with John Mack, Vickram Pandit and John
3 Thayne and their teams.

4 **Q. You testified earlier about the**
5 **unencumbered collateral in the clearance boxes**
6 **that Ian Lowitt identified as assets to be**
7 **transferred, do you recall that?**

8 A. Yes.

9 **Q. And you testified that there was an**
10 **agreement that those assets would be transferred**
11 **made on the Friday, September 19?**

12 A. Yes.

13 **Q. Is that right?**

14 A. Correct.

15 **Q. You also testified that you were aware**
16 **of an issue over the weekend relating to the**
17 **DTC's desire for some support for settlement**
18 **obligations on the Monday, correct?**

19 A. Correct.

20 **Q. And your general understanding was**
21 **Barclays agreed to deposit \$250 million to**
22 **address those settlement obligations?**

23 A. Yes.

24 **Q. Did anyone at any time ever tell you**
25 **or lead you to believe -- let me withdraw that**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **viable purchasers then?**

3 MR. HUME: Object to the form. Calls
4 for speculation.

5 A. I think the -- there were -- we were
6 open to a transaction with anybody, so if
7 somebody was willing to take that kind of risk,
8 I assume they would have showed up.

9 **Q. Do you think they would have shown up**
10 **if they were not told there was a \$5 billion**
11 **haircut embedded in the transaction?**

12 MR. KELLEY: Objection. Calls for
13 speculation.

14 A. There was no certainty what that
15 number was.

16 **Q. If, in addition to whatever else was**
17 **said about the deal publicly, it was also said**
18 **that there was a \$5 billion haircut embedded in**
19 **the transaction, do you think there would have**
20 **been other viable purchasers, do you know?**

21 MR. KELLEY: Objection. Calls for
22 speculation.

23 A. I don't know.

24 **Q. Are you able to say one way or the**
25 **other?**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 A. Not really.

3 **Q. Okay. Do you know the basis of the**
4 **estimated liabilities? You told Mr. Hume that**
5 **you knew that the liabilities for comp and cure**
6 **were estimated in some way. Do you know the**
7 **basis for the estimation?**

8 A. I assume that the basis was -- I don't
9 know the estimation. I knew it came from our
10 Finance Department.

11 **Q. And your understanding at the time on**
12 **the Friday when you were looking at this was**
13 **that those were estimates based upon Lehman's**
14 **books, correct?**

15 A. Upon the work that Lehman had done.

16 Certain, you know, liabilities only
17 come up in the nature a transaction like this,
18 right? So you cancel contracts you have
19 liabilities. So they would be contingent and
20 necessarily not necessarily on your books prior
21 to doing an acquisition like that.

22 So the -- it's -- it's not -- it's not
23 completely -- it wouldn't be completely just
24 what was actually recorded on the books. There
25 would also be other liabilities that could be

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 triggered by the transaction itself.

3 **Q. And back to this issue of a viable**
4 **purchaser, if it had been announced in addition**
5 **to the other components of the deal that --**
6 **withdrawn.**

7 **You understood the assumed liabilities**
8 **component of the deal to be a cost that Barclays**
9 **would have in the transaction, correct?**

10 A. Correct.

11 **Q. If it had been publicly announced that**
12 **the \$2 billion cost for compensation had been**
13 **deliberately inflated by a billion dollars, that**
14 **in your view would lower the actual cost for**
15 **Barclays, correct?**

16 MR. KELLEY: Same objection.

17 A. If --

18 **Q. If it --**

19 A. If the answer is if it was inflated,
20 it would lower the cost, the answer is yes,
21 that's factual, I think.

22 **Q. If it had been announced in addition**
23 **to other components of the deal that the assumed**
24 **liability for compensation was deliberately**
25 **inflated by a billion dollars, do you have a**

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1 **HIGHLY CONFIDENTIAL - A. KIRK**
2 **view as to whether that might have attracted**
3 **other viable purchasers?**

4 A. The market was so uncertain and there
5 was so much financial stress in the list of
6 potential purchasers that I'm not sure there was
7 anybody who could have executed it no matter
8 what they thought the gain was because the
9 market would have viewed it as too risky, so to
10 speak, and too strategically risky in many ways
11 and too risky from a financial standpoint to
12 approve them for any board to approve it.

13 **Q. In your view --**

14 A. No matter what the gain was.

15 **Q. Sure. And in your view, was there at**
16 **any point where additional value in the deal**
17 **might have attracted other viable purchasers?**

18 MR. HUME: Objection. Asked and
19 answered.

20 A. None with the time to actually execute
21 it.

22 **Q. And what was your role in determining**
23 **whether or not there were other actual viable**
24 **purchasers?**

25 A. I didn't have a role in that.

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1 **HIGHLY CONFIDENTIAL - A. KIRK**

2 **Q. Did you have any role at all in that?**

3 A. No, that was the role of the FIG, the
4 FIG bankers, Financial Institutions Group.

5 MR. GAFFEY: Thanks. Nothing further.

6 THE WITNESS: Okay.

7 MR. ROTHMAN: One question.

8 EXAMINATION BY

9 MR. ROTHMAN:

10 **Q. Fair to say that you don't know how**
11 **the dispute -- the terms of the resolution of**
12 **the dispute with the DTC on that Sunday night?**

13 MR. HUME: Objection. Vague and
14 ambiguous.

15 MR. KELLEY: Asked and answered, too.

16 A. I don't know. Did you say is it fair
17 to say I don't know the terms?

18 **Q. You don't know, yes.**

19 A. I only know it was described that
20 there was 250 million put into the DTC account.
21 I don't know the full terms. As I said, there
22 may have been other terms that I was not aware
23 of.

24 **Q. You don't know, beyond that 250**
25 **million that we discussed, you don't know one**

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<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 way or the other what was supposed to happen to</p> <p>3 the unencumbered assets that had been in that</p> <p>4 DTC box, correct?</p> <p>5 A. No, I don't know that.</p> <p>6 MR. ROTHMAN: Thank you.</p> <p>7 MR. HUME: Let me have follow up on</p> <p>8 that.</p> <p>9 EXAMINATION BY</p> <p>10 MR. HUME:</p> <p>11 Q. When you say you don't know the</p> <p>12 unencumbered assets in the DTC box, to the</p> <p>13 extent that they were identified by Mr. Lowitt</p> <p>14 as transferable assets, was it your</p> <p>15 understanding they were going to be transferred</p> <p>16 as part of the deal?</p> <p>17 (Continued on the next page to include</p> <p>18 the jurat.)</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 MR. ROTHMAN: Objection to the form.</p> <p>3 A. Yes.</p> <p>4 MR. HUME: No further questions.</p> <p>5 THE WITNESS: I may have misunderstood</p> <p>6 the earlier question.</p> <p>7 MR. GAFFEY: I'm going to have mercy.</p> <p>8 I have no follow-up questions.</p> <p>9 (Time Noted: 3:06 P.M.)</p> <p>10 oOo</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Subscribed and sworn to</p> <p>21 before me this day</p> <p>22 of 2009.</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss</p> <p>5 COUNTY OF NEW YORK)</p> <p>6 I, Kathy S. Klepfer, a Registered</p> <p>7 Merit Reporter and Notary Public within and</p> <p>8 for the State of New York, do hereby</p> <p>9 certify:</p> <p>10 That ALEX KIRK, the witness whose</p> <p>11 deposition is herein before set forth, was</p> <p>12 duly sworn by me and that such deposition is</p> <p>13 a true record of the testimony given by such</p> <p>14 witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this action</p> <p>17 by blood or marriage and that I am in no way</p> <p>18 interested in the outcome of this matter.</p> <p>19 I further certify that neither the</p> <p>20 deponent nor a party requested a review of</p> <p>21 the transcript pursuant to Federal Rule of</p> <p>22 Civil Procedure 30(e) before the deposition</p> <p>23 was completed.</p> <p>24 In witness whereof, I have hereunto</p> <p>25 set my hand this 31st day of August, 2009.</p> <p>-----</p> <p>KATHY S. KLEPFER, RPR, RMR, CRR, CLR</p>	<p>1 HIGHLY CONFIDENTIAL - A. KIRK</p> <p>2 INDEX</p> <p>3 WITNESS: EXAMINATION BY PAGE</p> <p>4 A. KIRK Mr. Gaffey 5, 208</p> <p>5 Mr. Rothman 176, 213</p> <p>6 Mr. Tecce 190</p> <p>7 Mr. Hume 213, 214</p> <p>8 EXHIBITS: PAGE</p> <p>9 Exhibit 316, an e-mail chain with 121</p> <p>10 attached balance sheet</p> <p>11 Exhibit 317, a document bearing Bates 132</p> <p>12 Nos. 10310050</p> <p>13 Exhibit 318, a document bearing Bates 137</p> <p>14 Nos. 10325943 with attachment</p> <p>15 Exhibit 319, an e-mail chain 140</p> <p>16 Exhibit 320, a document bearing Bates 145</p> <p>17 Nos. 10293820</p> <p>18 Exhibit 321, a document bearing Bates 153</p> <p>19 Nos. AK-LB-BANKR00002 through 27</p> <p>20 Exhibit 323, a document bearing Bates 160</p> <p>21 Nos. AK-LB-BANKR000030</p> <p>22 Exhibit 324, a document bearing Bates 171</p> <p>23 Nos. AK-LB-BANKR0000987 through 119</p> <p>24 Exhibit 325, a document bearing Bates 174</p> <p>25 Nos. AK-LB-BANKR000188</p>

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1	HIGHLY CONFIDENTIAL - A. KIRK	1 HIGHLY CONFIDENTIAL - A. KIRK
2	INDEX (Cont'd.)	2 NAME OF CASE: In re Lehman Brothers
3	EXHIBITS: PAGE	3 DATE OF DEPOSITION: August 31, 2009
4	Exhibit 326, an e-mail chain 186	4 NAME OF WITNESS: Alex Kirk
5	Exhibit 327, an e-mail chain dated 195	5 Reason Codes:
6	September 21, 2008	6 1. To clarify the record.
7		7 2. To conform to the facts.
8		8 3. To correct transcription errors.
9		9 Page _____ Line _____ Reason _____
10		10 From _____ to _____
11		11 Page _____ Line _____ Reason _____
12		12 From _____ to _____
13		13 Page _____ Line _____ Reason _____
14		14 From _____ to _____
15		15 Page _____ Line _____ Reason _____
16		16 From _____ to _____
17		17 Page _____ Line _____ Reason _____
18		18 From _____ to _____
19		19 Page _____ Line _____ Reason _____
20		20 From _____ to _____
21		21 Page _____ Line _____ Reason _____
22		22 From _____ to _____
23		23 Page _____ Line _____ Reason _____
24		24 From _____ to _____
25		25 ALEX KIRK